

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

FILE NUMBER 14-061721

JONATHAN HILL
(Hereinafter called "Employee")

FORSYTH COUNTY
(Hereinafter called "Employer")

PMA COMPANIES
(Hereinafter called "Servicing Agent").

AGREEMENT OF FINAL SETTLEMENT AND RELEASE

THIS AGREEMENT OF FINAL SETTLEMENT AND RELEASE, made and entered into this, the 23rd day of March, 2016, by and between Jonathan Hill, hereinafter called the Employee, and Forsyth County, hereinafter called the Employer, and by and through PMA Companies, hereinafter called the Servicing Agent,

WITNESSETH:

WHEREAS, the parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act and, on the 23rd day of December, 2014, the relationship of Employer-Employee having existed; and

WHEREAS, the Employee alleges that he suffered a compensable injury by accident arising out of and in the course of his employment as a Detention Officer on December 23, 2014. On that date, the Employee was running to assist an inmate when he slipped on water in a flooded cell and fell on the ground, which injured his right wrist and right upper extremity; and

WHEREAS, the Employer and Servicing Agent accepted the Employee's right wrist injury as compensable pursuant to a Form 60, dated May 22, 2015. At the time of

WHEREAS, the Employee is represented by Oxner + Permar, Greenville, North

Carolina, Joel Davis, appearing, and the Employer and Servicing Agent are represented by the Kestenbaum Law Firm, Durham, North Carolina, Jane Kestenbaum appearing; and

WHEREAS, the Employee, Employer, and Servicing Agent feel that it is in the best interests of the parties to have finality of litigation in these matters, and to that end desire to compromise and settle all matters in controversy among themselves, without the necessity of any hearing before the North Carolina Industrial Commission, subject to the approval of said Commission, as by law provided.

NOW, THEREFORE, notwithstanding the controversy between the Employee and the Defendants, and in specific recognition of the need for finality in the litigation, and in consideration of the things hereinabove received as having been done and the things hereinafter agreed to be done and the mutual agreements on the part of each of the parties, it is agreed as follows:

1. The Employer and Servicing Agent agree to pay or cause to be paid to the Employee and without commutation, the lump sum of THIRTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$35,000.00) in full and final settlement of all compensation due or to become due under and by virtue of the North Carolina Workers' Compensation Act for the claim that is subject to this agreement.

2. Whereas, the Employee contends that he suffered significant injury to his right wrist and right upper extremity which has permanently and totally disabled him from

any further gainful employment. The Employee's date of birth is 10/10/1975 and he is currently 30 years old, which calculates a statutory life expectancy under N.C.G.S. § 8-46 of 47.5 years, or 570 months, or 2,470 weeks; and

Whereas, the Employer and Servicing Agent agree to pay or cause to be paid to the Employee the lump sum of THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS in full and final settlement of all compensation due or to become due under and by virtue of the North Carolina Workers' Compensation Act and this is the only payment to which the Employee will be entitled for his entire life for the injury described herein above. This sum is strictly in consideration of the Employee's future lost wages and future medical expenses. No part of the consideration paid by the Defendants in the settlement of this claim is for medical expenses paid by a group health insurance carrier, or paid by any other entity in connection with the injury to his right wrist. Accordingly, the payments described herein below are deemed and intended by the parties to be lifetime payments pro-rataable over the plaintiff's expected remaining lifetime beginning the day after this agreement is approved by the Industrial Commission; and

Whereas, it is anticipated that EIGHT THOUSAND SEVEN HUNDRED AND FIFTY (\$8,750.00) DOLLARS of the total THIRTY-FIVE THOUSAND (\$35,000.00) DOLLAR settlement shall be paid to the Employee's counsel as an attorney fee, leaving a total net recovery to Plaintiff-Employee of TWENTY-SIX THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$26,250.00) as compensation for future wage loss over the Employee's remaining lifetime and in lieu of those periodic workers' compensation benefits to which the Employee may be or could have become entitled as a result of the

injuries described herein above. This payment shall be allocated to the Employee's expected lifetime beginning the day after this agreement is approved by the Industrial Commission. This sum shall be paid specifically as consideration for, and in lieu of, all wages which may have been earned by the Employee over the remaining 47.5 years, or 570 months, or 2,470 weeks of his life at the rate of \$46.05 per month, or \$10.63 per week.

3. The Employer and Servicing Agent will pay, or cause to be paid, any medical bills incurred as the result of the Employee's accepted, compensable right wrist and right upper extremity injuries up to the date of this agreement and no further. However, the parties agree that all such medical bills are paid in full and there are no outstanding medical bills related to this accepted claim. It is further agreed by the parties that the positions of the respective parties to the Agreement are reasonable as to the payment of medical expenses. The parties hereby acknowledge that the issue of the payment of medical expenses is a material element to the Employer and Servicing Agent entering into this agreement.

4. Whereas it is not the intention of the parties to this Settlement Agreement to shift responsibility for future medical treatment that the Employee may need to Medicare at some future time. In considering these issues, the parties specifically considered the fact that the Employee has not applied for Social Security Disability Benefits as a result of his accidental injury of December 23, 2014 and the Employee is currently not Medicare eligible and has no reasonable expectation of becoming Medicare eligible related to the accidental injury that is the subject of this claim. In that regard, the parties have

reasonably considered the interest of Medicare in reviewing all medical records related to this matter and have in good faith determined that no allocation is needed. Therefore, no Medicare Set Aside has been established.

5. The Employer and Servicing Agent agree to pay or cause to be paid the costs of this proceeding before the North Carolina Industrial Commission.

6. It is understood and agreed by the Employee that in making this Agreement, he was not influenced by any representations or statements regarding his condition, the nature of his injuries, or any other matters concerning his claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of the Employer or Servicing Agent; that the facts in connection with his employment and with his accidental injury and impaired physical condition, if any, are fully known, understood and comprehended by the Employee, and that his rights under the Workers' Compensation Act are thoroughly and completely understood by him. In making this Agreement the parties hereto understand that the Employee's condition as a result of his injuries may be permanent, recurrent and progressive, and in making this Agreement it is understood that the sum of money herein paid and other agreements recited above are in full and final settlement of all claims of the Employee against the Employer and Servicing Agent as to claims under the North Carolina Workers' Compensation Act, including future medical expenses, change of condition and/or death benefits. The parties expressly waive the right, if any, to set aside this Settlement Agreement should the medical opinions made orally to the Employee by his health care providers, expressed in this Agreement, and/or in the medical records prove to be in error.

Further the parties agree that this Agreement may not be set aside on the grounds that further or additional medical information or records exist or could be acquired. The parties affirmatively represent to the Industrial Commission that they have each had the opportunity and ability to obtain the medical and other records necessary to appropriately evaluate this claim and to enter into this Settlement Agreement.

7. The Employee agrees to accept the sums herein agreed to be paid to him or on his behalf, in full, final and complete settlement and satisfaction of any past, present and future claims, demands, suits, actions or rights of action of whatsoever nature and kind, which the said Employee now has or may hereinafter have or claim to have on account of the alleged injuries of December 23, 2014. It is the sense of this agreement that the said sums so agreed to be paid shall be accepted in full settlement and satisfaction of all claims arising out of alleged injuries of December 23, 2014, whether presently existing, or presently known, or whether hereinafter existing, appearing or otherwise, and whether by virtue of things now existing or by change of conditions hereinafter. However, it is further agreed that no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released. The Employee knowingly and intentionally waives any right he may hereafter have to claim any medical expenses or indemnity compensation for the injuries which are the subject of this agreement.

8. The parties to this agreement hereby waive any hearing before the North Carolina Industrial Commission, and in presenting this agreement for approval, they represent that they have made available to the Commission with said agreement all

medical information presently in their possession concerning the Employee's physical condition.

9. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission and to the provisions of the North Carolina Workers' Compensation Act, and the same shall be binding upon the parties to this agreement only if and when the same shall have been submitted to and approved by said Commission either by the endorsement of its approval hereon or by the issuance of its award approving the same.

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IN WITNESS WHEREOF, the parties hereto have set their hands and Employee has adopted as his seal the "Seal" appearing beside his signature, all as of the day and year first above written.


 (Seal)
 JONATHAN HILL, EMPLOYEE

STATE OF NORTH CAROLINA

COUNTY OF Guilford

I, Melissa Martin Wolfe, a Notary Public in and for said County and State, do hereby certify that JONATHAN HILL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this, the 8th day of April, 2016.

Melissa Martin Wolfe
 Notary Public

My Commission Expires: 09-04-2016

MELISSA MARTIN WOLFE Notary Public, North Carolina Guilford County My Commission Expires <u>September 04, 2016</u>

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FORSYTH COUNTY, Employer

By:

Attorney

PMA COMPANIES, Servicing Agent

By:

Attorney

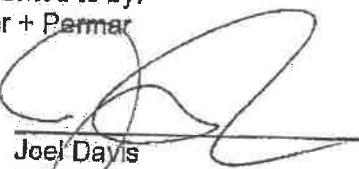
By:


Jane Kestenbaum
NC State Bar No. 16459
Attorney for Employer
Kestenbaum Law Firm
P.O. Box 51939
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(919) 459-2366


Jane Kestenbaum

Consented to by:
Oxner + Permar

By:


Joel Davis
NC State Bar No.
Attorney for Employee
Oxner + Permar
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Greensboro, NC 27408
(336) 274-4494

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Forsyth County, ("the County") and Jonathan Hill ("the Employee"), the Parties to this SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement" or "General Release"), agree that the following sets forth their complete agreement and understanding regarding the Employee's separation from employment with the County and all issues related to the Employee's employment with the County.

1. The County and Employee acknowledge that the Employee's employment with the County ceased on January 20, 2016, when the Employee was terminated from the County for reasons unrelated to his workers' compensation claim.

2. The County and the Employee both wish to resolve any and all outstanding issues between them in order to provide certainty regarding the handling of any issues between them, related to either of them or involving both of them, in the future.

3. In consideration for the promises made by the Employee in this Agreement, the County agrees to pay the Employee's portion of the mediator's fee, provide a neutral reference, AND OTHER VALUABLE CONSIDERATION, receipt of which is hereby acknowledged by the Employee, in connection with the Employee's Workers' Compensation claim, N.C.I.C. File Number 14-061721.

4. The consideration from the County set forth in Paragraph 3 above constitutes full settlement of any and all claims the Employee may have against the County, its successors, assigns, subsidiaries, affiliates, entities, insurers or any of its officers, directors, shareholders, employees, agents, or representatives, for compensation or otherwise.

5. In consideration for the promises made by the County in Paragraph 3 above, the Employee, for himself, his agents, assignees, heirs, executors and administrators, fully releases the County, and its successors, assigns, subsidiaries, affiliates, entities, insurers, officers, directors, shareholders, employees, agents and representatives, from any and all liability, costs, expenses and remedies of any type, by reason of any act or omission arising out of or in connection with the Employee's employment with or termination from employment by the County, including without limiting the generality of the forgoing, claims under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), the Civil Rights Act of 1866, as amended (42 U.S.C. § 1981), the Americans with Disabilities Act, as amended ("ADA"), the Family and Medical Leave Act, as amended ("FLMA"), the National Labor Relations Act, as amended ("NLRA"), the North Carolina Retaliatory Employment Discrimination Act, as amended ("REDA"), or any other federal, state, or local statute or regulation regarding employment, discrimination in employment, or the termination of employment, workers' compensation, occupational health and safety, or environmental protection, and/or federal or state common law related to employment contracts, wrongful discharge, or any other matter.

The Employee further covenants not to sue or bring any claim whatsoever in any forum against the County or any of the persons or entities released herein, and agrees to indemnify the County and such persons or entities released herein for all attorney's fees and costs which they incur should the Employee breach this covenant not to sue or bring claim.

6. In further consideration for the promises made by the County in Paragraph 3 above, the Employee, for himself, his agents, assignees, heirs, executors and administrators, fully releases the County, and its successors, assigns, subsidiaries, affiliates, entities, branches, insurers, officers, directors, shareholders, employees, vendors, agents and representatives, from any and all liability, costs, expenses and remedies of any type, for any and all claims the Employee may have against the County related to the accident which is the subject of his workers' compensation claim, N.C.I.C. File Number 14-061721, including, but not limited to, a claim or action asserted against the County's liability insurance.

7. In further consideration for the promises made by the County in Paragraph 3, above, Employee agrees to never apply for employment or otherwise seek to be hired, rehired, employed, reemployed or reinstated by the County or any of its affiliates, entities, branches, parents or subsidiaries in any paid or volunteer position, and waives any reinstatement or future employment with the County or any of its affiliates, entities, branches, parents or subsidiaries in any paid or volunteer position. Further, the Employee agrees he will not accept any future employment with the County or any of its affiliates, entities, branches, parents or subsidiaries.

8. The existence and execution of this Agreement and General Release shall not be considered and shall not be admissible in any proceeding, as an admission by the County, or its agents or employees, of any liability, error, violation or omission.

9. Employee understands and agrees that the existence and terms of this General Release and Agreement of Final Settlement and Release filed with the North Carolina Industrial Commission are confidential and shall not be disclosed to any third party without the written consent of the County, unless compelled to do so by legal process. Employee further agrees that if he breaks this promise, he will become immediately liable to the County for (1) the full amount given to him by the County under Paragraph 3, above, and (2) any costs, including attorneys' fees, incurred by the County in collecting that amount from Employee.

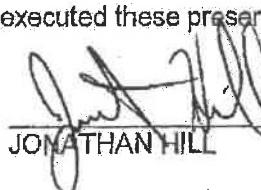
10. This Agreement and General Release shall be binding upon and shall be for the benefit of the County, its successors, assigns, subsidiaries, affiliates, entities, insurers, agents, representatives and employees and the Employee, as well as her respective heirs, personal representatives, successors and assigns.

11. The provisions of this Agreement and General Release shall be severable, and the invalidity of any provision shall not affect the validity of the other provisions.

12. Employee acknowledges that the County advised him to consult with an attorney before executing this Agreement and that he was advised that he has twenty-one (21) days to review this Agreement before signing it. To the extent the Employee signs this Agreement in less than twenty-one (21) days, the Employee knowingly and voluntarily waives any rights he may have in that regard. The Employee further acknowledges that he fully understands the terms of the Agreement, that he was not coerced into signing it, and that he signed it knowingly and voluntarily.

12. The Employee acknowledges further that he understands that he has seven (7) days after signing this Agreement within which he can revoke his acceptance of it and that this Agreement will not become effective until after the seven (7) day period for revocation has passed.

IN WITNESS WHEREOF, I have executed these presents, this, the 8th day of April, 2016.


JONATHAN HILL

STATE OF NORTH CAROLINA

COUNTY OF Guilford

I, Melissa Martin Wolfe, a Notary Public in and for said County and State, do hereby certify that JONATHAN HILL personally appeared before me this day and acknowledged the due execution of the foregoing Instrument.

WITNESS my hand and notarial seal, this, the 8th day of April, 2016.

Melissa Martin Wolfe

Notary Public
(Seal)

My Commission Expires: 09-04-2016

